

A **PANGLIMA TENTERA LAUT DIRAJA MALAYSIA & ORS v.  
SIMATHARI SOMENAUDU**

FEDERAL COURT, PUTRAJAYA  
ZULKEFLI AHMAD MAKINUDDIN CJ (MALAYA)  
RICHARD MALANJUM CJ (SABAH & SARAWAK)

B RAMLY ALI FCJ  
ZAHARAH IBRAHIM FCJ  
BALIA YUSOF WAHI JCA  
[CIVIL APPEAL NO: 01(f)-17-07-2014(W)]  
10 JANUARY 2017

C **ADMINISTRATIVE LAW:** *Judicial review – Proceedings – Appeal for leave to Federal Court against Court of Appeal's decision allowing application for judicial review – Royal Malaysian Navy – Termination from service under Queen's Regulations for Royal Navy Revised 1967 ('QRRN') – Whether QRRN could be*  
D *relied upon for termination of non-commissioned servicemen – Whether QRRN saved when Navy Ordinance 1958 repealed by Armed Forces Act 1972 – Whether any new regulations to provide for termination of servicemen in place of provisions in QRRN – Interpretation of s. 217(2) of Armed Forces Act 1972 – Intention of Parliament – Whether continued operation of QRRN prejudicially affected –*  
E *Whether QRRN's continued application preserved by ss. 30(2)(a)(ii) & 33 of Interpretation Acts 1948 and 1967 – Whether termination under QRRN lawful*  
**STATUTORY INTERPRETATION:** *Construction of statutes – Interpretation of – Armed Forces Act 1972, s. 217(2) – Omission of words 'or applied by' – Whether detracted from clear intention of Parliament to 'save' subsidiary legislation –*  
F *Interpretation Acts 1948 and 1967, ss. 30(2)(a)(ii) & 33*

The respondent, a non-commissioned serviceman with the Royal Malaysian Navy, was charged for allegedly misusing flight warrants. The Navy decided to terminate his service. As a result of the respondent's refusal to complete the 'BAT B 83 (Pemberhentian)' form, the respondent was charged with  
G insubordination under sub-s. 49(b) of the Armed Forces Act 1972 ('Armed Forces Act') and was found guilty. Based on the same finding of insubordination, the first appellant instructed the third appellant to initiate termination proceedings against the respondent under art. 0877 of the Queen's Regulations For The Royal Navy Revised 1967 ('QRRN') on the  
H ground that his service was no longer required. The QRRN was among the statutes made applicable to the Navy by s. 10 of the Navy Ordinance 1958 ('Navy Ordinance'). The proceedings resulted in the respondent's termination from service. The respondent applied for leave to commence judicial review proceedings against the decision to terminate his service  
I under the QRRN, claiming that the QRRN was no longer applicable by virtue of the repeal of the Navy Ordinance by the Armed Forces Act. The High Court, in dismissing the respondent's application, held that QRRN had

not been specifically repealed as envisaged by s. 217(2) of the Armed Forces Act and hence remained enforceable. The respondent appealed to the Court of Appeal. In a majority decision, the Court of Appeal held that s. 217(2) of the Armed Forces Act did not save the QRRN as the QRRN was not made under the Navy Ordinance but only applied to the Navy under s. 10 of the Navy Ordinance. Thus, the Court of Appeal allowed the respondent's appeal. Leave was granted to the appellants to appeal to this court against the decision of the Court of Appeal on this sole question: Whether the termination of non-commissioned servicemen under the QRRN *via* the Navy Ordinance read together with s. 217(2) of the Armed Forces Act was lawful and had the force of law in Malaysia.

**Held (allowing appeal; setting aside order of Court of Appeal)**

**Per Zaharah Ibrahim FCJ delivering the judgment of the court:**

- (1) The issue for determination for the purpose of the leave question was whether the QRRN was saved when the Navy Ordinance was repealed by the Armed Forces Act. The application to the Navy of the QRRN and other statutes then in force in the Royal Navy was a measure to ensure that there existed, and continued to exist until otherwise provided, the necessary legal provisions to regulate and administer the Navy and its personnel. At the material time of the respondent's termination from service, no regulations had been made under s. 16 of the Navy Ordinance to provide for the termination of a serviceman in place of the provisions in the QRRN, and no regulations had been made under s. 36 of the Armed Forces Act to provide for such termination. Subsection 217(2) of the Armed Forces Act must be read in light of the other provisions of the Act (in particular s. 28(3) of the Act) and the Navy Ordinance, as well as the reasons why the QRRN was made applicable to the Navy and the fact of the absence of any regulations made under s. 16 of the Navy Ordinance or under s. 36 of the Armed Forces Act to replace them. (paras 41-56)
- (2) To interpret sub-s. 217(2) of the Armed Forces Act in a strictly literal manner would certainly lead to the absurd consequence that a naval serviceman for want of regulations made under s. 16 of the Ordinance or s. 36 of the Armed Forces Act, could not, at the material time, be terminated from service except in pursuance of a sentence by a court-martial. That could not have been intended by Parliament. In the circumstances of this case, the court must, as exhorted by s. 17A of the Interpretation Acts 1948 and 1967 ('Interpretation Acts'), give to sub-s. 217(2) of the Armed Forces Act a construction that would promote the underlying purpose of that subsection: which was clearly to preserve the subsidiary legislation in force and applying to Navy servicemen at the time of coming into force of that subsection until such time as the subsidiary legislation was replaced under the Armed Forces Act. (paras 58-63)

- A (3) The absence of the words ‘as if made under this Ordinance’ in s. 10 of the Ordinance in relation to the QRRN and other subsidiary legislations being applied under s. 10 did not place the QRRN and the other subsidiary legislations on a different footing from a subsidiary legislation made under s. 16 of the Ordinance. The omission of the words ‘or applied by’ in sub-s. 217(2) of the Armed Forces Act does not detract from the clear intention of Parliament to ‘save’ all subsidiary legislation in force as at the date of the coming into force of the Armed Forces Act so long as the legislation was not inconsistent with the provisions of the Act. (paras 65 & 66)
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- C (4) It was not in dispute that the QRRN was a subsidiary legislation and was still in force at the time the Armed Forces Act came into force. The QRRN was a written law within the meaning of the terms as defined in s. 3 of the Interpretation Acts. Subsection 30(2)(a)(ii) of the Interpretation Acts therefore applied to the QRRN. The provisions of sub-s. 30(2)(a)(ii) of the Interpretation Acts clearly show that upon the repeal of the Navy Ordinance which (by its s. 10) applied to the QRRN to the Navy, the continued operation of the QRRN was not prejudicially affected. (paras 73 & 74)
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- E (5) Section 33 of the Interpretation Acts makes it clear that the specific savings provisions in the written law (which in this context, is the Armed Forces Act) ‘shall be without prejudice to the application of ss. 28, 29, 30, 31 and 32 in respect of that law.’ Therefore, despite the QRRN not being mentioned in the specific savings provisions in sub-s. 217(2) of the Armed Forces Act, the QRRN’s continued application (until specifically repealed or revoked) was preserved by virtue of s. 33 of the Interpretation Acts. (paras 76 & 79)
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- G (6) Thus, the answer to the leave question was that the QRRN applied by the Navy Ordinance continued to have the force of law notwithstanding the repeal of that Ordinance by sub-s. 217(2) of the Armed Forces Act, until the QRRN was specifically repealed or revoked. Consequently, the termination of non-commissioned servicemen under the QRRN while the QRRN was still in force was lawful. (para 80)

*Bahasa Malaysia Headnotes*

- H Responden, seorang anggota tentera tanpa tauliah dengan Tentera Laut Diraja Malaysia, dituduh menyalahgunakan waran penerbangan. Tentera Laut memutuskan untuk menamatkan perkhidmatan perayu. Akibat keengganan responden untuk melengkapkan borang ‘BAT B 83 (Pemberhentian)’, responden dituduh dengan ketidakturutan di bawah sub-s. 49(b) Akta Angkatan Tentera 1972 (‘Akta Angkatan Tentera’) dan didapati bersalah.
- I Berdasarkan pendapatan ketidakturutan yang sama, perayu pertama memberi arahan kepada perayu ketiga untuk memulakan prosiding penamatan perkhidmatan terhadap responden di bawah per. 0877 Queen’s Regulations

For the Royal Navy Revised 1967 ('QRRN') atas alasan bahawa perkhidmatannya tidak diperlukan lagi. QRRN adalah salah satu statut yang terpakai bagi Tentera Laut oleh s. 10 Navy Ordinance ('Ordinan'). Prosiding tersebut mengakibatkan penamatan perkhidmatan responden. Responden memohon kebenaran untuk memulakan prosiding semakan kehakiman terhadap keputusan untuk menamatkan perkhidmatannya di bawah QRRN dengan tuntutan bahawa QRRN tidak lagi diguna pakai menurut kuasa pemansuhan Ordinan oleh Akta Angkatan Tentera. Mahkamah Tinggi, dalam menolak permohonan responden, memutuskan bahawa QRRN tidak secara khususnya dimansuhkan seperti yang diperuntukkan oleh s. 217(2) Akta Angkatan Tentera dan oleh itu kekal berkuat kuasa. Responden merayu kepada Mahkamah Rayuan. Dalam keputusan majoriti, Mahkamah Rayuan memutuskan bahawa s. 217(2) Akta Angkatan Tentera tidak menyelamatkan QRRN kerana QRRN tidak dibuat di bawah Ordinan tetapi hanya diguna pakai untuk Tentera Laut di bawah s. 10 Ordinan. Oleh itu, Mahkamah Rayuan membenarkan rayuan responden. Kebenaran diberikan untuk perayu-perayu merayu ke mahkamah ini terhadap keputusan Mahkamah Rayuan di atas persoalan tunggal ini: Sama ada penamatan perkhidmatan anggota tentera tanpa tauliah di bawah QRRN melalui Ordinan dibaca bersama dengan s. 217(2) Akta Angkatan Tentera adalah sah dan mempunyai kuasa undang-undang di Malaysia.

**Diputuskan (membenarkan rayuan; mengetepikan perintah Mahkamah Rayuan)**

**Oleh Zaharah Ibrahim HMP menyampaikan penghakiman mahkamah:**

- (1) Isu yang perlu ditentukan bagi tujuan soalan undang-undang yang dibenarkan adalah sama ada QRRN terselamat apabila Ordinan dimansuhkan oleh Akta Angkatan Tentera. Pemakaian QRRN kepada Tentera Laut dan beberapa statut yang lain yang pada masa itu berkuat kuasa dalam Tentera Laut adalah satu langkah untuk memastikan wujudnya, dan kewujudannya berterusan sehingga sebaliknya, peruntukan undang-undang yang diperlukan untuk mengawal dan mentadbirkan Tentera Laut dan kakitangannya. Pada waktu material semasa perkhidmatan responden ditamatkan, tiada peraturan dibuat di bawah s. 16 Ordinan untuk memperuntukkan penamatan anggota tentera bagi menggantikan peruntukan-peruntukan QRRN, dan tiada peraturan dibuat di bawah s. 36 Akta Angkatan Tentera untuk memperuntukkan penamatan sedemikian. Subseksyen 217(2) Akta Angkatan Tentera harus dibaca berdasarkan peruntukan-peruntukan lain Akta (khususnya s. 28(3) Akta) dan Ordinan, dan juga alasan-alasan mengapa QRRN digunakan kepada Tentera Laut dan fakta bahawa tiada peraturan dibuat di bawah s. 16 Ordinan di bawah s. 36 Akta Angkatan Tentera untuk menggantikannya.

- A (2) Untuk mentafsirkan sub-s. 217(2) Akta Angkatan Tentera dengan cara yang tegas dan literal akan membawa ke akibat yang tidak masuk akal bahawa anggota Tentera Laut tidak boleh ditamatkan perkhidmatannya kerana tiada peruntukan di bawah s. 16 Ordinan atau s. 36 Akta Angkatan Tentera pada waktu material itu, kecuali jika terdapat hukuman oleh mahkamah tentera. Ini tidak mungkin dimaksudkan oleh B Parlimen. Dalam keadaan kes ini, mahkamah harus seperti yang digesakan oleh s. 17A Akta Tafsiran 1948 dan 1967 ('Akta Tafsiran'), memberikan kepada s. 217(2) Akta Angkatan Tentera pentafsiran yang akan menggalakkan tujuan yang mendasari subseksyen itu: iaitu untuk C memelihara perundangan subsidiari yang berkuat kuasa dan mengguna pakai kepada anggota Tentera Laut pada masa penguatkuasaan subseksyen itu sehingga perundangan statutori digantikan di bawah Akta Angkatan Tentera.
- D (3) Ketiadaan perkataan 'as if made under this Ordinance' dalam s. 10 Ordinan berhubungan dengan QRRN dan perundangan subsidiari yang lain yang diguna pakai di bawah s. 10 tidak meletakkan QRRN dan perundangan subsidiari lain di satu kedudukan berbeza dari perundangan subsidiari yang dibuat di bawah s. 16 Ordinan. Peninggalan perkataan 'or applied by' dalam sub-s. 217(2) Akta Angkatan Tentera tidak E mengurangkan tujuan jelas Parlimen untuk 'menyelamatkan' semua perundangan subsidiari yang berkuat kuasa pada tarikh penguatkuasaan Akta Angkatan Tentera selagi perundangan selaras dengan peruntukan-peruntukan Akta.
- F (4) Tidak dipertikaikan bahawa QRRN adalah perundangan subsidiari yang masih berkuat kuasa pada masa Akta Angkatan Tentera dikuatkuasakan. QRRN adalah undang-undang bertulis dalam maksud terma seperti yang ditafsirkan dalam s. 3 Akta Tafsiran. Subseksyen 30(2)(a)(ii) Akta Tafsiran oleh itu diguna pakai kepada QRRN. Peruntukan sub-s. 30(2)(a)(ii) Akta Tafsiran dengan jelasnya menunjukkan bahawa G atas pemansuhan Ordinan (melalui s. 10) diguna pakai kepada QRRN kepada Tentera Laut, operasi berterusan QRRN tidak terjejas secara prejudis.
- H (5) Seksyen 33 Akta Tafsiran adalah jelas bahawa peruntukan khusus dalam undang-undang bertulis (dalam konteks ini, adalah Akta Angkatan Tentera) 'shall be without prejudice to the application of ss. 28, 29, 30, 31 and 32 in respect of that law'. Oleh itu, walaupun QRRN tidak disebut dalam peruntukan penyelamatan khusus dalam s. 217(2) Akta Angkatan Tentera, pemakaian berterusan QRRN (sehingga dimansuhkan atau dibatalkan) dipelihara menurut kuasa s. 33 Akta Tafsiran.
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- (6) Oleh itu, jawapan kepada persoalan yang dibentangkan adalah bahawa QRRN diguna pakai oleh Ordinan terus mempunyai kuasa undang-undang walaupun Ordinan dimansuhkan oleh sub-s. 217(2) Akta Angkatan Tentera, sehingga QRRN dibatalkan dan dimansuhkan secara spesifik. Oleh itu, penamatan anggota tentera tanpa tauliah di bawah QRRN semasa QRRN masih berkuat kuasa adalah sah di sisi undang-undang.

**Case(s) referred to:**

*CCM Industrial v. Uniquetech* [2009] 2 SLR 20 (*refd*)  
*Corocraft Ltd and Another v. Pan American Airways Inc* [1968] 2 All ER 1059 (*refd*)  
*Md Redzuan Alang lwn. Panglima Tentera Laut & Satu Lagi* [2011] 1 CLJ 656 HC (*refd*)  
*PP v. Viran* [1947] 1 LNS 82 HC  
*Swan v. Pure Ice Company, Limited* [1935] 2 KB 265 (*refd*)  
*Tetuan Kumar Jaspal Quah & Aishah v. Far Legion Sdn Bhd & Anor* [2007] 3 CLJ 230 CA (*refd*)

**Legislation referred to:**

Armed Forces Act 1972, ss. 28(3), 36, 49(b), 90, 217(1), (2)  
 Armed Forces (Terms of Service of Regular Forces) Regulations 2013, reg. 68  
 Interpretation Acts 1948 and 1967, ss. 2, 3, 10, 17A, 30(2)(a)(ii), 33  
 Navy Ordinance 1958 (since repealed), ss. 10, 11, 16

Rules of Court [Sing], O. 22A rr. 9(5), 12

**Other source(s) referred to:**

*Bennion on Statutory Interpretation*, 5th edn, p 502  
*Maxwell on the Interpretation of Statutes*, 7th edn, p 217  
 For the appellant - Shamsul Bolhassan & Shahroni Sanusi; SFCs  
 For the respondent - Yudistra Darma Dorai & Elizabeth Goh Huay Ling; M/s Raj, Ong & Yudistra  
 [Editor's note: For the Court of Appeal judgment, please see *Simathari Somenaidu v. Panglima Tentera Laut Diraja Malaysia & Ors* [2016] 4 CLJ 244 (overruled).]  
 Reported by Suhainah Wahiduddin

**JUDGMENT**

**Zaharah Ibrahim FCJ:**

**Introduction**

[1] This is an appeal by the appellants against the decision of the Court of Appeal which allowed the respondent's appeal against the decision of the High Court dismissing the respondent's application for judicial review to quash the decision to terminate the respondent's service as a serviceman in the Royal Malaysian Navy ("Navy").

**Background Facts**

[2] The undisputed facts of this case are as set out below.

- A [3] The respondent was a non-commissioned serviceman with the Navy. He was charged under the Anti-Money Laundering, Anti-Terrorism Financing And Proceeds of Unlawful Activities Act 2001 for allegedly misusing flight warrants.
- B [4] The Navy decided to terminate his service. By letter dated 3 March 2011 written on behalf of the first appellant, the third appellant, as the commanding officer of KD Sri Gombak where the respondent was attached, was directed to submit an application for the respondent's termination from service, together with his service documents, for further action.
- C [5] The third appellant asked the respondent to complete the "BAT B 83 (Pemberhentian)" form but the respondent refused to do so.
- [6] As a result of the respondent's refusal, the respondent was charged with insubordination under sub-s. 49(b) of the Armed Forces Act 1972 ("Armed Forces Act").
- D [7] The respondent was found guilty of the charge against him and was penalised with the sentence of "tahanan cuti 28 hari" and was also given a warning.
- E [8] Based on the same finding of insubordination, the first appellant instructed the third appellant to initiate termination proceedings against the respondent under art. 0877 of the Queen's Regulations For the Royal Navy Revised 1967 ("QRRN") on the ground that his service was no longer required.
- F [9] The QRRN were among the Statutes made applicable to the Navy by s. 10 of the Navy Ordinance 1958 ("Navy Ordinance").
- [10] The proceedings resulted in the respondent's termination from service with effect from 29 March 2012.

**At The High Court**

- G [11] On 4 May 2012, the respondent applied for leave to commence judicial review proceedings against the decision to terminate his service under the QRRN. Leave was granted on 27 June 2012.
- [12] On 2 October 2012 the High Court dismissed the respondent's application for judicial review of the decision to terminate his service under the QRRN.
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***Issues Before The High Court***

- I [13] The central issue before the High Court was whether the QRRN were still valid and applicable to non-commissioned servicemen of the Navy at the time of the respondent's termination from service.

[14] The respondent contended that the QRRN were no longer applicable by virtue of the repeal of the Navy Ordinance by the Armed Forces Act. The respondent submitted that sub-s. 217(2) of the Armed Forces Act did not save the QRRN. The case of *Md Redzuan Alang lwn. Panglima Tentera Laut & Satu Lagi* [2011] 1 CLJ 656 was cited in support of that submission. In *Md Redzuan*, the High Court held that the QRRN were not saved as they were not made under the repealed Navy Ordinance.

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[15] For the appellants, it was argued in the High Court that as the QRRN were not specifically repealed under sub-s. 217(2) of the Armed Forces Act, the QRRN remained in force. According to the appellants, the provision of sub-s. 217(2) of the Armed Forces Act made it clear that any regulation made or made applicable under the Ordinances repealed under sub-s. 217(1) continued to have force and be applicable so long as the regulation is not inconsistent with the provisions of the Armed Forces Act, until replaced under the Act.

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[16] It was the appellants' contention that the Navy had not adopted or applied the Army and Air Force (Terms of Service) Regulations 1961 and thus no new provision had been made under the Armed Forces Act in respect of the Navy. Therefore, until and unless specific regulations were made for the Navy or for all three branches of the armed forces, the QRRN were still applicable to the Navy.

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[17] It was also the appellants' contention that the fact that the Armed Forces Council had, in its meeting no 366 on 31 March 1998, approved the application of the QRRN showed that the QRRN remained applicable law at the material time.

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*High Court Decision*

[18] The learned High Court Judge agreed with the appellants' contention, and disagreed with the decision in *Md Redzuan Alang*. Her Ladyship's view on this point as set out in her oral decision is reproduced below:

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[11] First, in my considered view, even though technically speaking QRRN was not enacted under the Navy Ordinance, it was applied by virtue of s. 10 of the said Ordinance and was applicable to the British Royal Navy as well as the Malaysian Navy. In my view the fact that the QRRN was applied by virtue of the Navy Ordinance then, it is as good as it is made under the Ordinance and hence s. 217(2) applies. In my view even though under s. 217(2) QRRN was not made under the Navy Ordinances it was applied under the said Ordinances, all the same.

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[12] More importantly to my mind the Regulations was not specifically repealed under s. 217(2). QRRN was not specifically repealed under s. 217 to render it unenforceable. Hence, it is saved by this provision. Contrary to it being repealed in fact, the Armed Forces Council in its meeting no.

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A 366 on 31.3.1998 had approved the application of QRRN. This would fortify further that QRRN have not been specifically repealed as envisaged by s. 217(2) of AFA, and hence would remain enforceable.

[19] The secondary issue before the High Court was whether the termination of the respondent under the QRRN on the same factual basis as the charge for insubordination under s. 49 of the Armed Forces Act amounted to double jeopardy.

[20] The learned High Court Judge did not agree that the respondent suffered double jeopardy when he was imposed with two punishments under the Armed Forces Act and then again had his service terminated under the QRRN. The learned High Court Judge merely had the following to say:

[15] On the charge made against the Applicant under s. 49(b) AFA the Applicant contended double jeopardy. From the facts it is clear that the charge against the Applicant was premised on his refusal to obey the command of his superior which he in fact admitted. Hence there is no issue of him having to be court martial [sic] for the charge in question.

[21] The respondent appealed to the Court of Appeal against the High Court decision.

[22] For the record, there is now in force a uniform set of regulations on terms of service of regular forces, including the Navy. These are the Armed Forces (Terms of Service of Regular Forces) Regulations 2013 which came into force on 26 June 2013, having been published in the *gazette* on 25 June 2013. Regulation 68 of the Regulations makes provision for the cessation of the application of the QRRN to the Navy.

**At The Court Of Appeal**

[23] Before the Court of Appeal, only one issue was pursued, namely the issue of whether the QRRN still had the force of law (at the time of the respondent's termination from service).

[24] The Court of Appeal, in a majority decision, held that the QRRN were no longer valid law at the material time.

[25] The majority held that sub-s. 217(2) of the Armed Forces Act did not save the QRRN as the QRRN were not made under the Navy Ordinance but were only applied to the Navy under s. 10 of the Navy Ordinance.

[26] It was the view of the majority that:

[48] ... s. 217(2), being a savings provision is very clear in its intention, which is to save all subordinate or subsidiary legislation made under the repealed enactments and ordinances set out in s. 217(1), which in our case is the said Ordinance or the Navy Ordinance 1958.

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- [49] The words “made under” must be given its plain and ordinary meaning and cannot be extended to include regulations applied by s. 10(1) of the said Ordinance. If it was the intention of the legislature to save such regulations they could have done so by adding the words “or applied under” after the words “made under” in s. 217(2) of the AFA. A
- [50] As the Queen’s Regulations is punitive in nature in that it provides, *inter alia* for the termination of service of members of the TLDM, it is imperative that the words in s. 217(2) of the AFA be given a strict construction such that only regulations made under the said Ordinance are saved and not regulations applied by the said Ordinance. B
- [51] It would be straining the language of s. 217(2) too much if the words “made under” is construed to mean “applied under”. C
- ...
- [54] In the case of the said Ordinance the regulations would be those made under s. 16 of the said Ordinance. S. 16(1) confers power on the Armed Forces Council, with the approval of the Yang di-Pertuan Agong to make regulations to provide for *inter alia*, the terms and conditions of service of officers and ratings of the navy. D
- [55] It is significant that the said Ordinance itself makes a distinction between regulations made under the said Ordinance and regulations applied by virtue of s. 10. This can be seen in s. 11 and paragraph 3 of the First Schedule to the said Ordinance. E
- [56] S. 11 of the said Ordinance provides that the Armed Forces Council may by order amend, adapt or repeal the First Schedule to this Ordinance, and any enactment or regulation applied to the Navy by section 10. Paragraph 3 of the First Schedule stipulated that all regulations made under s. 16 shall be deemed to modify any enactment or regulation applied under s.10 insofar as they conflict with the first mentioned regulations. F
- [57] It can therefore be surmised that regulations made under s. 16 and regulations applied by virtue of s. 10 of the said Ordinance are different and treated differently by the said Ordinance. G
- [58] In the circumstances it is our view that the repeal of the said Ordinance would mean that the regulations applied by s. 10, which includes the Queen’s Regulations, would by virtue of that repeal be also repealed.
- [59] It would be different, in our view, had the law, namely the said Ordinance, provide expressly that regulations applied by s. 10 shall be deemed to be made under the said Ordinance. In such a situation, the regulations would fall within the scope of s. 217(2) of the AFA and they would by virtue thereof remain enforceable. H
- [27] The minority in the Court of Appeal however was of the view that the purposive approach advocated in s. 17A of the Interpretation Acts 1948 and 1967 (“Act 388”) should be applied. Applying the purposive approach, the I

- A minority view was that it could not be the intention of the Legislature to leave a lacuna in the legislation applying to the Navy on matters similar to those provided for in the QRRN as at the time of the repeal of the Navy Ordinance no regulations had been made to replace the QRRN under the Ordinance. As such, legislation applied under the Ordinance should be given the same force as legislation made under the Ordinance.

[28] The Court of Appeal thus, by a majority, allowed the appeal by the respondent and set aside the order of the High Court.

[29] The appellants appealed to this court.

C **At The Federal Court**

*Leave Question*

[30] Leave was granted to the appellants on 17 June 2014 to appeal to this court against the decision of the Court of Appeal.

- D [31] The sole question of law for which leave was granted (“leave question”) is as follows:

Whether the termination of non-commissioned servicemen under the Queen’s Regulations for the Royal Navy (QRRN) via the Naval Ordinance 1958 read together with section 217(2) of the Armed Forces Act 1972 is lawful and has the force of law in Malaysia.

*Submissions By Parties*

[32] Before us, learned Senior Federal Counsel submitted that the QRRN was written law within the meaning of that term as defined in s. 3 of Act 388.

- F [33] Emphasis was placed on para. (d) of the definition as a basis for learned Senior Federal Counsel’s submission that being subsidiary legislation applied under s. 10 of the Navy Ordinance, the QRRN were written law.

- G [34] On the issue of whether that written law continued to have the force of law despite the repeal of the Navy Ordinance by the Armed Forces Act, learned Senior Federal Counsel directed our attention to s. 30 of Act 388 which, he submitted, saved the QRRN.

- H [35] Learned Senior Federal Counsel submitted that by virtue of sub-s. 30(2)(a)(ii) of Act 388, the repeal of the Navy Ordinance by the Armed Forces Act did not affect the continued operation of the QRRN, which were regulations (written law) applied by the Navy Ordinance.

- I [36] With regard to the specific savings provisions in sub-s. 217(2) of the Armed Forces Act, learned Senior Federal Counsel submitted that those specific provisions did not affect the continued operation of the QRRN due to the provisions of s. 33 of Act 388.

[37] For the respondent, it was submitted that what were saved under sub-s. 217(2) of the Armed Forces Act were regulations “made under” the Navy Ordinance. As the QRRN were not made under the Ordinance but were only applied by the Ordinance to the Navy, the QRRN were not saved. A

[38] Learned counsel for the respondent also submitted, echoing the majority view in the Court of Appeal, that sub-s. 217(2) of the Armed Forces Act should be given strict construction as the QRRN were punitive in nature. B

[39] Learned counsel for the respondent disagreed with the view of the minority in the Court of Appeal that the QRRN needed to continue to be in force as without them no specific statutory provisions were in place to provide for the discipline and discharge of non-commissioned servicemen of the Navy. C

[40] According to learned counsel for the respondent, there are some 117 provisions in Part V of the Armed Forces Act which deal with disciplinary issues, in particular s. 90 which allows the service of a non-commissioned serviceman to be terminated. D

*Analysis*

[41] The issue for determination for the purpose of the leave question is whether the QRRN were saved when the Navy Ordinance was repealed by the Armed Forces Act. E

[42] Section 217 of the Armed Forces Act 1972 reads as follows:

Repeal of existing enactment and ordinances

217(1) The Malay Regiment Enactment, the Federation Regiment Ordinance 1952 [Ord. 27 of 1952], the Military Forces Ordinance 1952 [Ord. 47 of 1952], the Navy Ordinance 1958, the Air Force Ordinance 1958, the Territorial Army Ordinance 1958 [Ord. 52 of 1958], the Naval Volunteer Reserve Ordinance 1958 [Ord. 55 of 1958] and the Air Force Volunteer Reserve Ordinance 1958 [Ord. 58 of 1958], are hereby repealed: F

Provided that – G

- (a) all the armed forces raised under the provisions of the aforesaid enactment and ordinances shall be deemed to be raised under this Act; and
- (b) all officers and servicemen serving with the armed forces raised under the provisions of the aforesaid enactment and ordinances on the appointed day shall be deemed to have been commissioned, appointed, enlisted or re-engaged, as the case may be, under this Act, but such officers and servicemen shall not be required to serve with the regular forces for a longer period than that for which they were required to serve at the time of their original commissioning, appointment, enlistment or re-engagement, as the case may be. H I

- A (2) Notwithstanding the provisions of the last foregoing subsection or the provisions of any written law to the contrary, all rules, regulations, orders and other instruments made under the enactment and ordinances hereby repealed, in so far as they are not inconsistent with the provisions of this Act, shall remain in force until specifically repealed.
- B Is Subsection 217(2) To Be Given Strict Literal Interpretation?
- [43] It is not in dispute that the QRRN were not made under the Navy Ordinance that was repealed by sub-s. 217(1) of the Armed Forces Act. They were applied to the Malayan (then) Navy under s. 10 of the Navy Ordinance which provided as follows:
- C 10 (1) All the enactments and regulations for the time being in force in the Royal Navy shall, subject to the provisions of this Ordinance and in particular to the modifications set out in the Schedule to this Ordinance, apply to the officers and ratings of or serving with the Navy whether ashore or afloat or within or without the limits of the Federation.
- D (2) Any power conferred on the Admiralty by any enactment or regulation applied by sub-section (1) and relating to the remission, suspension or commutation of any sentence passed by a court-martial or disciplinary court shall be exercised by the Yang di-Pertuan Agong.
- [44] In the explanatory statement of the objects and reasons for the Navy Bill (which became the Navy Ordinance) presented to the Legislative Council of the Federation of Malaya, the Attorney-General of the Federation of Malaya explained the reason for the proposed continued application, by cl. 10 of the Bill, of the Enactments and Regulations then in force in the Royal Navy, as follows:
- F ... Since it is intended, however, that the Royal Malayan Navy raised under the provisions of the Royal Malayan Navy Ordinance (Cap. 86) of the Colony of Singapore will, insofar as it is practicable to do so, be used as the nucleus of the new Royal Malayan Navy, special provision is made for the enlistment in the Federation Navy of officers and ratings of the Navy raised under the Singapore Ordinance.
- G 3. For this reason, *inter alia*, provision is made for the application to the Navy, with suitable modifications, of the provisions of the law relating to naval discipline in force in the United Kingdom, and which at present apply to the navy raised under the Singapore Ordinance ...
- H [45] In other words, the Enactments and Regulations applied by s. 10 of the Navy Ordinance were themselves applied to the Royal Malayan Navy raised under the Singapore Ordinance and, by virtue of s. 10, made to continue to apply to the Navy raised under the Navy Ordinance.
- I [46] It is clear that the application to the Navy of the QRRN and other Statutes then in force in the Royal Navy was a measure to ensure that there existed, and continued to exist until otherwise provided, the necessary legal provisions to regulate and administer the Navy and its personnel.

[47] It must have been envisaged that regulations would be made under s. 16 of the Navy Ordinance to replace the QRRN. Unfortunately, this was not done. A

[48] Section 16 of the Navy Ordinance empowered the Armed Forces Council to make, with the approval of the Yang di-Pertuan Agong, regulations for various purposes. These regulations, when made, were deemed to modify any regulations applied under s. 10 if the applied regulations “conflict with the first mentioned regulations”. This was provided for in para. 3 of the Schedule to the Navy Ordinance. B

[49] Until the date of the repeal of the Navy Ordinance, no regulations were made under s. 16 of the Ordinance to replace the QRRN or which could be deemed to have modified the QRRN. C

[50] Thus, if the words of sub-s. 217(2) of the Armed Forces Act are to be read with a strictly literal approach (as was the approach taken by the majority in the Court of Appeal), then upon the coming into force of s. 217 of the Armed Forces Act the mechanism providing for the termination of a non-commissioned serviceman of the Navy whose service was no longer required ceased to exist. D

[51] The minority in the Court of Appeal took the view that a purposive approach must be used as without the QRRN there would be no regulations in place to deal with the termination of non-commissioned servicemen whose service was no longer required. E

[52] While it is true, as submitted by learned counsel for the respondent, that there are ample provisions in the Armed Forces Act to deal with matters of discipline, including termination/discharge of non-commissioned servicemen, our close scrutiny of the Act shows that those provisions involve court-martials. These include s. 90 of the Act mentioned by learned counsel for the respondent. This was not the case under the QRRN provision utilised in respect of the respondent in this case. F

[53] Part V of the Armed Forces Act deals with enlistment and terms of service for the regular forces. Under sub-s. 28(3), a serviceman such as the respondent could only be discharged from service in pursuance of a sentence of a court-martial or where “his discharge has been authorised by the competent authority in accordance with any regulations made under this Part”. G H

[54] Section 36 in the same Part V empowers the Armed Forces Council, with the approval of the Yang di-Pertuan Agong, to make regulations governing the enlistment of persons in the regular forces, and, among others, their discharge or dismissal from service. I

- A [55] It was not in dispute that at the material time of the respondent's termination from service, no regulations had been made under s. 16 of the Navy Ordinance to provide for the termination of a serviceman in place of the provisions in the QRRN, and no regulations had been made under s. 36 of the Armed Forces Act to provide for such termination.
- B [56] In our view, sub-s. 217(2) of the Armed Forces Act must be read in the light of the other provisions of the Act (in particular sub-s. 28(3) of the Act) and the Navy Ordinance, as well as the reasons why the QRRN were made applicable to the Navy and the fact of the absence of any regulations made under s. 16 of the Navy Ordinance or under s. 36 of the Armed Forces Act to replace them.
- C [57] What was obvious was that in the drafting of sub-s. 217(2) of the Armed Forces Act, the fact that the only regulations in place in relation to the termination of Navy servicemen were the QRRN, and that the QRRN were regulations applied to the Navy by s. 10 of the Navy Ordinance but not made or deemed to have been made under the Ordinance, had been overlooked. In respect of the other branches of the armed forces, there were regulations, such as the Army and Air Force (Terms of Service) Regulations 1961, which had been made under the respective applicable Enactment and Ordinances (which Enactment and Ordinances were also repealed under sub-s. 217(1) of the Armed Forces Act).
- D [58] To interpret sub-s. 217(2) of the Armed Forces Act in a strictly literal manner in the circumstances of this case would certainly lead to the absurd consequence that a naval serviceman, for want of regulations made under s. 16 of the Ordinance or s. 36 of the Armed Forces Act, could not, at the material time, be terminated from service except in pursuance of a sentence by a court-martial. That could not have been intended by Parliament.
- E [59] How then should the court interpret sub-s. 217(2) of the Armed Forces Act?
- F [60] The following words of Donaldson J in *Corocraft Ltd and Another v. Pan American Airways Inc* [1968] 2 All ER 1059 are quoted in *Bennion on Statutory Interpretation*, 5th edn, at p. 502:
- G The duty of the courts is to ascertain and give effect to the will of Parliament as expressed in its enactments. In the performance of this duty the judges do not act as computers into which are fed the statute and the rules for the construction of statutes and from whom issues forth the mathematically correct answer. The interpretation of statutes is a craft as much as a science and the judges, as craftsmen, select and apply the appropriate rules as the tools of their trade. They are not legislators, but finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing.
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[61] Romer LJ in *Swan v. Pure Ice Company, Limited* [1935] 2 KB 265 quoted the following passage from *Maxwell on the Interpretation of Statutes*, 7th ed., p. 217: A

They (ie, the authorities) would seem rather to establish that the judicial interpreter may deal with careless and inaccurate words and phrases in the same spirit as a critic deals with an obscure or corrupt text, when satisfied, on solid grounds, from the context or history of the enactment, or from the injustice, inconvenience, or absurdity of the consequences to which it would lead, that the language thus treated does not really express the intention and that his amendment probably does. B

[62] In *Tetuan Kumar Jaspal Quah & Aishah v. Far Legion Sdn Bhd & Anor* [2007] 3 CLJ 230, Suriyadi Halim Omar JCA (as he then was), said: C

... Maxwell in *Interpretation of Statutes* had occasion to quote the following passage from *Nokes v. Doncaster Amalgamated Collieries* [1940] AC 1014/1022:

... Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words but where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction. *At the same time, if the choice is between two interpretations the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result* (emphasis added). D E

[63] We agree with the minority in the Court of Appeal that in the circumstances of this case, the court must, as exhorted by s. 17A of the Act 388, give to sub-s. 217(2) of the Armed Forces Act a construction that would promote the underlying purpose of that subsection: which is clearly to preserve the subsidiary legislation in force and applying to Navy servicemen at the time of coming into force of that subsection until such time as the subsidiary legislation is replaced under the Armed Forces Act. F G

[64] We note that under s. 11 of the Navy Ordinance the laws applied under s. 10 were treated as subsidiary legislation under the Ordinance, *albeit* not made under the Ordinance. This can be deduced from the fact that under s. 11 of the Ordinance, they could be amended, adapted or repealed by an Order made by the Armed Forces Council. H

[65] In our considered view, the absence of the words “as if made under this Ordinance” in s. 10 of the Ordinance in relation to the QRRN and other subsidiary legislation being applied under s. 10 did not place the QRRN and the other subsidiary legislation on a different footing from subsidiary legislation made under s. 16 of the Ordinance. I

A [66] It is also our considered view that the omission of the words “or applied by” in sub-s. 217(2) of the Armed Forces Act does not detract from the clear intention of Parliament to “save” all subsidiary legislation in force as at the date of the coming into force of the Armed Forces Act so long as the legislation is not inconsistent with the provisions of the Act.

B Effect Of ss. 30 And 33 Of Act 388 On The QRRN

[67] Learned Senior Federal Counsel, as mentioned above, pointed us in the direction of ss. 30 and 33 of Act 388 which, he submitted, save the QRRN.

C [68] Sections 30 and 33 of Act 388 read as follows:

**Matters not affected by repeal**

30 (1) The repeal of a written law in whole or in part shall not

- D (a) affect the previous operation of the repealed law or anything duly done or suffered thereunder; or
- (b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law; or
- (c) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed law; or
- E (d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment

F may be imposed, as if the repealing law had not been made.

(2) Without prejudice to the generality of subsection (1) –

- (a) the repeal of a written law which adopts, extends or **applies** another **written law** shall not –
- G (i) invalidate the adoption, extension or application; or
- (ii) **prejudicially affect the continued operation of the adopted, extended or applied law;** and
- (b) the repeal of a written law which amends another written law shall not –
- H (i) invalidate the amendments made by the repealed law; or
- (ii) prejudicially affect the continued operation of that other law as amended.

(emphasis added)

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**Specific transitional and saving provisions to be without prejudice to sections 28 to 32**

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33. Specific transitional or saving provisions included in a written law shall be without prejudice to the application of sections 28, 29, 30, 31 and 32 in respect of that law.

[69] These two provisions of Act 388 were not referred to or even alluded to in the judgments of the Court of Appeal. We presume that the Court of Appeal's attention was not drawn to these provisions.

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[70] First of all, we need to state that as the repeal and savings provisions under discussion are contained in an Act of Parliament enacted after 18 May 1967, it is Part I of Act 388 which applies (as provided for in s. 2 of Act 388). Sections 30 and 33 are found in that Part.

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[71] It is not in dispute that the QRRN were subsidiary legislation and were still in force at the time the Armed Forces Act came into force on 1 June 1976. It is their continued operation thereafter that is the issue before us.

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[72] Section 3 of Act 388 defines "written law" as follows:

"written law" means:

(a) the Federal Constitution and the Constitutions of the States and subsidiary legislation made thereunder;

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(b) Acts of Parliament and subsidiary legislation made thereunder;

(c) Ordinances and Enactments (including any federal or State law styling itself an Ordinance or Enactment) and subsidiary legislation made thereunder; and

(d) *any other legislative enactments or legislative instruments (including Acts of Parliament of the United Kingdom of Great Britain and Northern Ireland and Orders in Council and other subsidiary legislation made thereunder) which are in force in Malaysia or any part thereof; [emphasis added]*

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[73] We therefore agree with learned Senior Federal Counsel that the QRRN were written law within the meaning of that term as defined in s. 3 of Act 388. Subsection 30(2)(a)(ii) of that Act therefore applied to the QRRN.

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[74] The provisions of sub-s. 30(2) (a)(ii) of Act 388 clearly show that upon the repeal of the Navy Ordinance which (by its s. 10) applied the QRRN to the Navy, the continued operation of the QRRN was not prejudicially affected.

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[75] There is however the problem of the specific saving provision in sub-s. 217(2) of the Armed Forces Act. When that provision saves only regulations made under the Navy Ordinance, does it mean that the QRRN's continued operation was not saved?

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A [76] This is where s. 33 of Act 388 comes into play. Section 33 makes it clear that the specific savings provisions in the written law (which, in this context, is the Armed Forces Act 1972), “shall be without prejudice to the application of ss. 28, 29, 30, 31 and 32 in respect of that law”.

B [77] In the case of *CCM Industrial v. Uniquetech* [2009] 2 SLR 20, Chan Sek Keong CJ, had occasion to deal with the expression “without prejudice” appearing in O. 22A r. 9(5) and r. 12 of Singapore’s Rules of Court. His Lordship said:

C The expression “without prejudice” in a statutory provision ordinarily means that what follows in that provision (here, the factors to be taken into account) is not to impair the force of the existing provisions and is therefore not to override or repeal them (see *Public Prosecutor v. Viran* [1947] 1 MLJ 62 at 64 per Spenser-Wilkinson J).

D [78] In *Public Prosecutor v. Viran* [1947] 1 LNS 82, the accused was charged in the District Court under the Arms Enactment for being in possession of a shotgun and under the rules made under s. 5 of the Explosives Enactment, respectively. On the very day that the accused was before the District Court, the Firearms and Ammunition (Unlawful Possession) Ordinance 1946 was gazetted. The District Judge decided to frame charges under s. 3 of the Ordinance which read as follows:

E 3. Without prejudice to the provisions of any written law in force in any part of the Malayan Union relating to unlawful possession of arms or ammunition, any person who shall, after the commencement of this Ordinance, be in unlawful possession of any firearm or ammunition shall be liable to imprisonment of either description for a term which may extend to ten years or to a fine not exceeding ten thousand dollars or to both such imprisonment and fine.

F As the 1946 Ordinance provided for a higher penalty for possession of arms and ammunition, the District Court concluded that the provisions of the Arms Enactments and the rules made under the Explosives Enactment with regard to penalties for possession of arms and ammunition had been impliedly repealed. He then transferred the case to the Magistrate’s Court for a preliminary inquiry to be held. The Public Prosecutor appealed against that order. Spencer-Wilkinson J, in discussing the interpretation to be given to s. 3 of the 1946 Ordinance, said the following:

G It seems clear, therefore, that where the law provides, either in the same or different Enactments, for different penalties for the same offence that both or all of the provisions as to punishments are intended to stand side by side and that it is left to the proper authorities to decide under which of the different provisions the offender shall be prosecuted and punished.

H The next question is whether this general rule is affected in this instance by the opening phrase of Section 3 of Ordinance No. 28. I think the meaning of the expression “without prejudice” in the context is not really

open to doubt. One meaning of the expression “to prejudice” is “to impair”, and I read the words “without prejudice to the provisions of any written law in force in any part of the Malayan Union relating to unlawful possession of arms or ammunition” as meaning that what follows is not to impair the force of any of the existing provisions and is therefore not to override or repeal them.

[79] In our view therefore, despite the QRRN not being mentioned in the specific savings provisions in s. 217(2) of the Armed Forces Act, the QRRN’s continued application (until specifically repealed or revoked under that Act) was preserved by virtue of s. 33 of Act 388.

### Conclusion

[80] Based on our analysis above, we answer the leave question in the following manner:

The QRRN applied by the Navy Ordinance 1958 continued to have the force of law notwithstanding the repeal of that Ordinance by subsection 217(2) of the Armed Forces Act 1972, until the QRRN are specifically repealed or revoked. Consequently, the termination of non-commissioned servicemen under the QRRN while the QRRN are still in force is lawful.

[81] We therefore allow this appeal and set aside the order of the Court of Appeal.

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